

**NOV 30 2005****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

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**UNITED STATES OF AMERICA,****Plaintiff - Appellee,****v.****JOSE ANTONIO SAENZ-FRANCO,****Defendant - Appellant.**

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**No. 04-30481****D.C. No. CR-04-00305-RSM****MEMORANDUM\***

**Appeal from the United States District Court  
for the Western District of Washington  
Ricardo S. Martinez, District Judge, Presiding**

**November 8, 2005\*\***

**Before: WALLACE, LEAVY, and BERZON, Circuit Judges.**

Jose Antonio Saenz-Franco appeals the sentence imposed following his guilty plea to illegal reentry following deportation in violation of 8 U.S.C.

§ 1326(a). We have jurisdiction under 28 U.S.C. § 1291.

As the district court sentenced Saenz-Franco at a time when the United

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).



States Sentencing Guidelines were mandatory, and they are now discretionary, we remand to the district court to determine if Saenz-Franco should receive a different sentence under the advisory Sentencing Guidelines system consistent with *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005).

**REMANDED.**